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No. _____

In the Supreme Court of the United States

STATE OF TEXAS,
Petitioner,

v.

RAUL REYES,
Respondent.

On Petition for Writ of Certiorari to the Court of Appeals for the Eighth Judicial District of Texas

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PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does the anti-attachment provision of the Social Security Act, 42 U.S.C. §407, preempt the Texas child support guideline in TEX. FAM. CODE §154.062(b)(5), which requires a court to consider a parent's Supplemental Security Income in determining that parent's child support obligation?

PARTIES TO THE PROCEEDING IN THE COURT OF APPEALS

1. State of Texas.

2. Estella M. Gonzales, mother of the child.

3. Raul Reyes, father of the child.

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PETITION FOR WRIT OF CERTIORARI

An intractable conflict exists among numerous state and federal courts that have addressed the scope of §407 of the Social Security Act and its application to child support determinations. The court of appeals in this case erroneously held that the anti-attachment provision of §407 preempts the Texas child support guideline in TEX. FAM. CODE §154.062(b)(5) and prohibits a court from considering Supplemental Security Income (SSI) in determining the proper amount of child support. Because of the conflict among the courts, thousands of children may not be receiving the support to which they are entitled. The Court should grant the State's petition to resolve this long-standing conflict.

CITATION OF COURT OF APPEALS'S OPINION

Reyes v. Gonzales, 22 S.W.3d 516 (Tex. App.—El Paso 2000, pet. denied).

BASIS FOR JURISDICTION

The court of appeals issued its opinion on January 13, 2000. The Texas Supreme Court denied the State's petition for review on January 11, 2001. The Court has jurisdiction pursuant to 28 U.S.C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST. art. VI, cl. 2:

> This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

42 U.S.C. §407(a), (b):

> (a) The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.
>
> (b) No other provision of law . . . may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section.

TEX. FAM. CODE §154.062(a), (b)(5):

(a) The court shall calculate net resources for the purpose of determining child support liability as provided by this section.

(b) Resources include:

. . . .

(5) all other income actually being received, including severance pay, retirement benefits, pensions, trust income, annuities, capital gains, social security benefits, unemployment benefits, disability and workers' compensation benefits, interest income from notes regardless of the source, gifts and prizes, spousal maintenance, and alimony.

STATEMENT OF THE CASE

Raul Reyes is the biological father of Estella M. Reyes. Reyes does not live with Estella or her mother, but lives with his second wife, her two sons, and a son he fathered with his second wife. In 1991 and 1994, a court ordered Reyes to pay $135 per month in child support for Estella. App. B, at B-2, B-3.[1]

At the time the child support order was issued, Reyes was employed as a janitor. In 1993, he quit his job after suffering a stroke, and suffering from tiredness and dizziness while working. Later in 1993, he applied for Supplemental Security Income (SSI) disability benefits. He began to receive SSI benefits in 1995, including an $11,000 check for retroactive SSI. Reyes spent the money on a van and on an addition to his second wife's house.

In April 1996, Reyes filed a motion to modify the child support order to reduce his support obligation to zero. CR 1-3. Reyes argued that because his sole income had become SSI, the court could not consider it to determine his child support obligation. *Id.* He argued that the anti-attachment provision in 42 U.S.C. §407 of the Social Security Act preempts TEX. FAM. CODE §154.062(b)(5), which requires the court to consider SSI in determining child support obligations. The State filed a motion to enforce the order. CR 10.

The trial court modified the order by reducing Reyes's support obligation to $82.25 per month from that time forward and ordering that Reyes pay $25 in arrears. App. B. In determining the child support obligation, the court considered Reyes's monthly income of $470, consisting solely of SSI benefits. Reyes also was

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[1]In this petition, the abbreviation "CR" refers to the court's record. Citations to appendices are to the appendices of this petition.

receiving $131 in food stamps per month. In determining the amount available for Reyes's needs and Estella's support, the trial court heard Reyes's testimony that from his SSI income, he was spending $204 per month for his van and $116 per month to pay for loans. The loans were for furniture, clothes, a refrigerator, and private school tuition for his second wife's two sons and his biological son. Reyes testified that he was spending the remaining $150 per month on food and clothes for himself and his biological son. He also testified that he was living in his second wife's house, and that his second wife was employed.

Reyes filed a motion for new trial, which the court denied by specifically finding that §407 does not preempt the Texas statutory child support guidelines. App. C.

Reyes appealed the trial court's decision, again arguing that §407 preempts TEX. FAM. CODE §154.062(b)(5). CR 70-71. The court of appeals originally affirmed the trial court's order, but on rehearing withdrew its opinion and held that §407 preempts TEX. FAM. CODE §154.062(b)(5). App. A.

The State timely petitioned the Texas Supreme Court for review, but the court denied the State's petition.

SUMMARY OF ARGUMENT

The court of appeals's erroneous decision implicates three aspects of this Court's certiorari jurisdiction. The decision conflicts with the decisions of other state courts of last resort and United States courts of appeals; it decides an important question of federal law that has not been, but should be, settled by this Court; and it misapplies this Court's Supremacy Clause jurisprudence in the area of domestic relations.

Every child support proceeding that involves a parent receiving SSI benefits implicates the question presented in this case. The court of appeals decided that the Social Security Act's anti-attachment provision in 42 U.S.C. §407 prohibited the court from even considering Reyes's SSI as part of his net resources to determine whether he owed any child support to his daughter. Failing to apply this Court's Supremacy Clause jurisprudence, the court of appeals reasoned that including Reyes's SSI benefits in the child support calculation was foreclosed by §407 because if Reyes were to fail to pay the support, his SSI benefits could not be garnished to pay the obligation. As a result, Reyes is not obligated to pay any child support for his daughter, even though he has enough SSI funds to pay for food, clothing, and private schooling for his two stepsons, to whom he owes no legal obligation, and food, clothing, and private schooling for his biological son.

Because state and federal courts are split over the proper resolution of the issue in this case, courts are applying §407 in drastically different ways and children are arbitrarily receiving different amounts of child support by operation of the same federal law. The courts have attempted to apply this Court's Supremacy Clause and anti-attachment provision opinions to answer the question, but the courts still remain split over its proper resolution.

I. THE COURT OF APPEALS MISAPPLIED SUPREMACY CLAUSE JURISPRUDENCE.

The court of appeals's cursory opinion in this case ignores the cautionary approach the Court applies to preemption cases. *See, e.g., Maryland v. Louisiana*, 451 U.S. 725, 746 (1981); *New York Dep't of Social Servs., v. Dublino*, 413 US. 405 (1973); *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). In addition, the court of appeals misapplied the special standard of review under the Supremacy Clause that the Court has developed for domestic

relations cases. *See Rose v. Rose*, 481 U.S. 619, 625 (1987). The Court has consistently recognized that "[t]he whole subject of the domestic relations of husband and wife, parent and child, belongs to the law of the States and not to the laws of the United States." *Id.*, at 625 (quoting *In re Burrus*, 136 U.S. 586, 593-94 (1890), and citing *Hisquierdo v. Hisquierdo*, 439 U.S. 572, 581 (1979), and *McCarty v. McCarty*, 453 U.S. 210, 220 (1981)). "'On the rare occasion when state family law has come into conflict with a federal statute, this Court has limited review under the Supremacy Clause to a determination whether Congress has "positively required by direct enactment" that state law be pre-empted.'" *Id.* (quoting *Hisquierdo*, 439 U.S., at 581 (quoting *Wetmore v. Markoe*, 196 U.S. 68, 77 (1904))). "Before a state law governing domestic relations will be overridden, it 'must do "major damage" to "clear and substantial" federal interests.'" *Id.* (quoting *Hisquierdo*, 439 U.S., at 581 (quoting *United States v. Yazell*, 382 U.S. 341, 352 (1966))).

In 1972, Congress amended the Social Security Act to create the federal SSI program. 42 U.S.C. §1381 *et seq*. This program was intended "[t]o assist those who cannot work because of age, blindness, or disability," S. REP. NO. 92-1230, at 4 (1972), *reprinted in* 1972 U.S.C.C.A.N. 4989, by "set[ting] a Federal guaranteed minimum income level for aged, blind, and disabled persons." *Id.*, at 12; 20 C.F.R. §416.110 (1992).

Congress also enacted 42 U.S.C. §1383(d)(1), providing that §407 shall apply to SSI benefits to the same extent as it applies to Social Security benefits in subchapter II of the Social Security Act. 42 U.S.C. §1383(d)(1). The part of §407 pertinent to this case reads as follows:

> "(a) The right of any person to any future payment under this subchapter shall not be

> transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.
>
> (b) No other provision of law . . . may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section." 42 U.S.C. §407(a), (b).

Courts disagree on the meaning of "other legal process" in §407. However, applying the *ejusdem generis* rule requires that the meaning of "other legal process" be confined to the class of words preceeding it—execution, levy, attachment, and garnishment. Mere consideration of SSI to determine a child support obligation is not "legal process" and is not prohibited by §407.

After passing §407, Congress promulgated, as part of the Child Support Enforcement Act of 1975, a limited waiver of sovereign immunity that provides for the enforcement of child support. *See* 42 U.S.C. §659 *et seq*. Section 659, in pertinent part, reads as follows:

> "Notwithstanding any other provision of law (including section 407 of this title . . .), . . . moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States or the District of Columbia . . . to any individual . . . shall be subject, in like manner

> and to the same extent as if the United States or the District of Columbia were a private person, to withholding . . . and to any other legal process . . . to enforce the legal obligation of the individual to provide child support or alimony." 42 U.S.C. §659.

For the purposes of §659, "legal process" is defined, in pertinent part, as "any writ, order, summons, or other similar process in the nature of garnishment." 42 U.S.C. §659(i)(5). Because §659 directly relates to §407, the statutes should be read *in pari materi* with one another, and "legal process" must have the same meaning in both statutes—a proceeding "in the nature of garnishment."

Against this backdrop, the Texas legislature determined that individuals receiving SSI should not be exempt from supporting their children. As in many other states,[2] the Texas Family Code requires a court to consider SSI benefits as part of a parent's net resources to determine that parent's child support obligation. TEX. FAM. CODE §154.062(b)(5). Thus, unless federal law specifically prohibits consideration of SSI benefits, Texas courts must consider them in determining child support.[3]

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[2]Even those states that specifically exclude consideration of SSI benefits in the determination of child support provide that a court may deviate from the guidelines should the court's calculation pursuant to the guidelines be unjust or inappropriate in a particular case. 45 C.F.R. §302.56(g). In deviating from the guidelines, the states must take into consideration the best interests of the child. *Id.*

[3]Every state's child support guidelines must receive federal approval. *See* 45 C.F.R. §302.56(a). Thus, Reyes has argued that the very guideline approved by the federal government is preempted by a federal law—§407 of the Social Security Act. In addition, the federal

II. STATE AND FEDERAL COURTS ARE SPLIT ON THE PROPER RESOLUTION TO THE QUESTION PRESENTED IN THIS CASE.

Numerous state and federal courts are divided over the scope of §407 and whether SSI benefits may be considered to determine a child support obligation. As a result, whether §407 preempts a state law permitting or requiring a court to consider SSI benefits in determining child support obligations depends entirely on where the court is located. A child living in Arkansas, for example, would receive fewer benefits than the nearby child in Kentucky, merely because the state courts interpret §407 differently. This is an arbitrary and intolerable state of federal law, particularly because it impacts so vital a need as child support. *Compare Davis v. Office of Child Support Enforcement*, 20 S.W.3d 273 (Ark. 2000) (holding that §407 prohibits the consideration of SSI in determining a child support obligation), *with Commonwealth of Kentucky, ex rel. Morris v. Morris*, 984 S.W.2d 840 (Ky. 1999) (holding that §407 does not prohibit the consideration of SSI in determining a child support obligation). *Compare also Citronelle-Mobile Gathering, Inc. v. Watkins*, 934 F.2d 1180, 1192 (CA11 1991) (holding that there is an implied exception to §407 when "the reaching of Social Security benefits is not going to impair the ability of the recipient to satisfy his or her basic needs"), *Kirk v. Kirk*, 577 A.2d 976 (R.I. 1990) (holding Social Security benefits

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Office of Child Support Enforcement (OCSE) issued an opinion that even if a parent's only form of income is SSI, it should be considered in establishing child support payments, and that states should try to enforce the payments, so long as enforcement was not by garnishment or withholding. OCSE-PIQ-90-11. This opinion was issued ten years ago and is entitled to deference. *See Cottage Sav. Ass'n v. C.I.R.*, 499 U.S. 554, 560 (1991); *United States v. Correll*, 389 U.S. 299, 305-06 (1967).

may be reached by a former spouse for alimony or child support but not for property division), *and Cohen v. Murphy*, 300 N.E.2d 473 (Mass. 1975) (stating in dicta that §407 does not prohibit consideration of federal benefits in determining support to be ordered), *with Tenn. Dep't of Human Servs. ex rel. Young*, 802 S.W.2d 594, 599 (Tenn. 1990) (holding that §407 prohibits the garnishment of SSI for payment of child support).

In *Commonwealth of Kentucky ex rel. Morris v. Morris*, 984 S.W.2d 840 (Ky. 1999), the Kentucky Supreme Court found that §407 did not preempt a Kentucky statute that, like TEX. FAM. CODE §154.062(b)(5), requires consideration of SSI benefits in making a determination of parental income for child support purposes. 984 S.W.2d, at 841-42. In reaching this conclusion, the court found that the "patent intent" of §407 is to prohibit creditors from asserting claims upon SSI funds that take *precedence* over the SSI recipient's rights to such funds. *Id.*, at 841.[4] The court also applied the principle of *in pari materi* and found that the definition of "legal process" in 42 U.S.C. §659 supports the conclusion that the "legal process" referred to in §407 "is of the nature of a garnishment order directed towards a governmental entity."[5] *Id.*, at 841. The court found that nothing in the Kentucky statute "subjects SSI benefits to execution, levy, attachment, garnishment, or any similar involuntary transfer. It merely allows the court to include SSI benefits in the calculation, and as such, there is no direct conflict between the state and the federal statutes." *Id.*, at 841-42.

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[4] Such is not the case with child support since the judge evaluates both the child's and SSI recipient's need for funds.

[5] Congress has amended §659 since the decision in *Morris*, but such amendment is of no import to the court's comparison of §659 to §407.

The court in *Morris* also noted that the case presented only the "narrow issue" of whether the specific portion of the Kentucky statute that permits consideration of SSI benefits conflicts with §407. *Id.*, at 842. It explained the procedural history, which is virtually identical to that of this case: "This case began its appellate odyssey after the trial court denied appellee's motion for reduction of child support payments but before any effort directed toward enforcement such as contempt, garnishment, execution, or other coercive means authorized by various statutes." It followed with the statement that if enforcement had been sought, there would be appellate review of that issue as well. *Id.* Thus, the court indicated that there is a potential distinction between merely issuing a child support order and the method of enforcing the order. The Texas court of appeals, however, failed to recognize this distinction.[6]

In *Citronelle-Mobile Gathering, Inc. v. Watkins*, 934 F.2d 1180, 1192 (CA11 1991), the federal court of appeals for the Eleventh Circuit found in an implicit exception to §407 when "the reaching of Social Security benefits is not going to impair the ability of the recipient to satisfy his or her basic needs." 924 F.2d, at 1192. This holding supports the trial court's finding in this case that §407 was not violated and Reyes had enough funds to satisfy his basic needs and provide support for Estella.

In *Cohen v. Murphy*, 330 N.E.2d 473 (Mass. 1975), the Massachusetts Supreme Court did not directly decide whether a husband's Social Security benefits are exempt from child support claims under §407, but the court did state that "[w]hatever the effect of any exemption, we think it does not prevent consideration of

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[6]The State does not contend that a child support order based fully or partially on SSI cannot be enforced. The State contends that such orders can be enforced so long as it is not enforced by a process in the nature of garnishment.

Federal benefits in determining the amount of support to be ordered." 330 N.E.2d, at 475. The court continued, "[N]o question is before us as to the manner in which the order of the court can or should be enforced." *Id.* Thus, the Massachusetts Supreme Court indicated there is a distinction to be made between considering federal benefits in determining the amount of child support, and the method of enforcing a child support order.

Additional state courts of last resort and federal courts of appeals have interpreted the phrase "other legal process" in §407 narrowly, which supports the State's position that mere consideration of SSI is not prohibited by §407. *See, e.g., United States v. Devall*, 704 F.2d 1513, 1516-17 (CA11 1983) (holding that when the benefit recipient's ability to care for himself or herself is not implicated, §407 need not be applied); *Norman v. St. Clair*, 610 F.2d 1228, 1243 (CA5 1980) (holding that §407 "clearly contemplates a formal legal proceeding" to obtain the protected benefits, implying that the proceeding would be in the nature of garnishment); *Phipps v. Phipps*, 864 P.2d 613, 614, 617 (Idaho 1993) (holding that divorce agreement giving ex-wife one-third of ex-husband's total retirement benefits, including Social Security and other funds, is not legal process, in part because it did not specify source of payments to ex-wife); *Tunnicliff v. Commonwealth Dep't of Pub. Welfare*, 396 A.2d 1168, 1171 (Pa. 1978) (finding that SSI applicant's agreement to repay state interim assistance after receiving SSI is not legal process, mainly because the agreement did not specify SSI as the source of repayment); *cf. Dionne v. Bouley*, 757 F.2d 1344, 1355 (CA1 1985) (finding the purpose of §407 is to protect the Social Security beneficiary and those dependent upon him from the claims of *creditors*); *Dep't of Health & Rehabilitative Servs. v. Davis*, 616 F.2d 828, 831 (CA5 1980) (same); *Steiner v. Steiner*, No. 1999-CA-01220-SCt, 2001 WL 83936 (Miss. Feb. 1, 2001) (finding that veterans' disability benefits may be considered in a divorce agreement to determine the

amount of alimony to be paid, despite anti-attachment); *Brown v. Brown*, 288 N.E.2d 852 (Ohio Ct. App. 1972) (finding that the exemption provided by §407(a) should not be used "to defeat a familial obligation as distinguished from a claim arising out of a debtor-creditor relationship"); *LaFarr v. LaFarr*, 315 A.2d 235, 236-37 (Vt. 1974) (denying contention that child support order violated the Railroad Retirement Act's anti-alienation clause largely because the order did not specify the source of the payments).

Numerous lower state courts also have found that §407 does not prohibit the consideration of SSI in the calculation of child support. *See, e.g.*, *Ex parte Griggs*, 435 So.2d 103 (Ala. Civ. App. 1983) (finding SSI benefits are not exempt from child support payments; however, where beneficiary stated "he was unable to pay," it was error for the court to hold him in contempt); *In re Marriage of Anderson*, 522 N.W.2d 99, 99-102 (Iowa Ct. App. 1994) (affirming an alimony award based on a calculation of income including SSI benefits, and stating in dictum that SSI benefits are subject to legal process to pay child support); *Sharlot v. Sharlot*, 110 A.D.2d 299, 300-01 (N.Y. App. Div. 1985) (finding §407 did not prohibit consideration of SSI as part of the pool of assets to meet a support and maintenance obligation because the purpose of §407 is to protect the Social Security beneficiary and those dependent upon him from the claims of *creditors*, the exemption provided by §407 should not be used "to defeat a familial obligation as distinguished from a claim arising out of a debtor-creditor relationship," and the parent does not necessarily have to use the benefits to meet the obligation); *Landis v. Landis*, 691 A.2d 939, 941-42 (Pa. Super. Ct. 1997) (allowing SSI to be considered in a deviation from state child support guidelines); *Whitmore v. Kenney*, 626 A.2d 1180, 1180-85 (Pa. Super. Ct. 1993) (finding that §407 did not prevent the court from directing the mother, whose sole source of income was SSI benefits, to pay child support), *appeal denied*, 641 A.2d 587 (Pa. Mar. 18, 1994).

This Texas case is just one of many supporting the countervailing notion that §407 prohibits the consideration of SSI in determining child support obligations. In reaching that incorrect decision, the Texas court of appeals found instructive the Tennessee Supreme Court's opinion in *Tennessee Department of Human Servs. ex rel. Young v. Young*, 802 S.W.2d 594, 599 (Tenn. 1990). Even so, the court based its holding on different reasoning than that articulated in *Young*. In addition, *Young* is fundamentally distinguishable from this case because *Young* involved an order to *garnish* SSI benefits, as opposed to mere consideration of SSI benefits to determine a child support obligation.

In *Young*, the court held that §407 prohibited the garnishment of the petitioner's SSI check for the payment of child support, finding that §659 did not affect the protection of SSI benefits afforded under §407. *Young*, 802 S.W.2d 594, 595 (Tenn. 1990). The court found that "issuance of legal process of any sort to reach the SSI funds, either payable or paid, would substantially frustrate the primary purpose of the SSI program." *Id.*, at 597. The court also found that SSI is designed to benefit only the individual recipient, rather than the recipient and the recipient's dependents, although the court points to no authority that clearly indicates this is Congress's intent. *Id.*, at 598. *Contra Peura ex er rel. Herman v. Mala*, 977 F.2d 484, 490 (CA9 1990) (holding that the purpose of SSI is to assist "families"). The court declined to hold that the SSI recipient's family falls within a protected category so as to create an inescapable obligation upon the recipient. *Id.*, at 595.

The Arkansas Supreme Court decided *Davis v. Office of Child Support Enforcement*, 20 S.W.3d 273 (Ark. 2000), just a few months after the Texas court of appeals issued its opinion in this case. As in this case, the sole income of the petitioner in *Davis* was SSI disability benefits. In *Davis*, the court found subjecting SSI payments to state court child-support orders would do "major

damage" to a clear and substantial federal interest. *Davis*, 20 S.W.3d, at 277. The court found that the Arkansas statute that permitted the consideration of SSI benefits to determine a child support obligation was preempted by §407 and thus that Arkansas courts cannot order child-support payments based upon income from federal SSI disability benefits. *Id.*, at 278.

The phrase "other legal process" in §407 must be interpreted broadly for a court to find that it encompasses mere consideration of federal benefits when determining a child support obligation. Several state courts of last resort and federal courts of appeals support a broad reading. *See, e.g., Robbins ex rel. Robbins v. DeBuono*, 218 F.3d 197 (CA2 2000), *cert. denied sub nom. Novello v. Robbins*, 121 S.Ct. 760 (2001) (finding that §407 encompasses any formal or informal measure or threat of a measure that would result in a recipient having to use protected funds for a particular purpose, and that deeming is "legal process"); *King v. Schafer*, 940 F.2d 1182, 1185 (CA8 1991) (finding that the term "other legal process" in §407 includes the threat of legal process, such as a threat to sue or a threat to have federal funds withheld); *Fetterusso v. State of New York*, 898 F.2d 322 (CA2 1990) (finding that "other legal process" in §407 embraces not only the use of formal legal machinery but also resort to express or implied threats and sanctions); *Moore v. Colautti*, 483 F.Supp. 357, 368 (E.D. Pa. 1979), *aff'd*, 633 F.2d 210 (CA3 1980) (holding that §407 prohibits an express or implied threat of the use of "formal sanctions"); *First Nat'l Bank & Trust Co. v. Arles*, 816 P.2d 537 (Okla. 1991) (finding that the use of the courts to enforce an agreement between two parties is "other legal process" under §407, and that §407 forbids using a contempt action to try to force repayment of a contractual debt); *In re Michael S.*, 524 S.E.2d 443, 446 (W. Va. 1999) (finding that §407 prohibits a juvenile criminal defendant from paying restitution from his future SSI benefits because such

benefits are not subject to execution, levy, attachment, garnishment, or other legal process).

Lower state courts also have found that §407 preempts certain state actions involving SSI in the area of child support. *See, e.g., Esteb v. Enright ex rel. Indiana*, 563 N.E.2d 139, 141-42 (Ind. Ct. App. 1990) (holding SSI benefits are exempt from any legal process brought by any creditor, and reversing an order requiring a person whose only income was SSI to pay current and back child support or face sanctions for contempt); *Becker County Human Servs. v. Peppel*, 493 N.W.2d 573, 575-76 (Minn. Ct. App. 1992) (finding that §407 precluded an order threatening an SSI recipient with contempt if she did not pay child support); *Moore v. Sharp*, 532 N.Y.S.2d 811, 812 (N.Y. App. Div. 1988) (finding that as an SSI recipient, the obligor lacked sufficient income to pay child support); *Langlois v. Langlois*, 441 N.W.2d 286, 288 (Wis. Ct. App. 1989) (finding that under federal and state law, the court cannot order payments out of SSI).

This is an intractable split that has not been resolved by the Court's jurisprudence. A number of courts cite *Philpott v. Essex County Welfare Board*, 409 U.S. 413 (1973), in an attempt to argue that the Court has broadly interpreted "other legal process" in §407. Specifically, courts quote the Court's observation that §407 "imposes a broad bar against the use of any legal process to reach all social security benefits." *Philpott*, 409 U.S., at 417. This phrase is often quoted in isolation to support the idea that §407 prohibits absolutely any legal process, in the general sense of the term. However, courts fail to recognize that the Court decided that §407 prohibited the actual *reaching* of the funds but did not review the meaning of "legal process." Furthermore, at issue in *Philpott* was not so much the specific process involved, but, rather, whether there was an exception to attachment of funds based on who was trying

to reach the funds. The Court determined that there was not an exception for certain creditors. *Id.*

This case presents a particularly good opportunity for the Court to review this issue. First, this case is procedurally uncomplicated. Second, because Reyes's sole income is SSI, the Court would have the opportunity to resolve the issue of whether the fact that his SSI is his sole income impacts whether SSI may be considered. Third, because the child support order did not specify that the child support payments were to be made from Reyes's SSI funds, the Court would have the opportunity to resolve the conflict over whether such designation or lack of designation is important. Fourth, the child support order did not order garnishment of Reyes's SSI benefits, so this Court would have the opportunity to determine whether mere consideration of SSI benefits and the issuance of a child support order, without a garnishment order, is "other legal process," which will clarify the breadth of §407 as it applies to many federal benefits. Finally, the courts have considered these issues for more than ten years, but the conflict remains.

This Court's opinions do not resolve the conflict. The unique aspects of SSI, child support proceedings, and the specific anti-attachment language of §407 require authoritative review. Until this Court resolves the issue, SSI recipients and children will continue to receive disparate results based on a conflict among the state and federal courts regarding the proper interpretation of "other legal process" in §407 and its application to state child support statutes.

The availability of child support is crucial to the well-being of the nation's children and families. The result in this case, and cases like it, permit SSI recipients to hide behind their benefits and dodge child support obligations, even though they can afford to pay

them. As a consequence, thousands of children may not be receiving the support to which they are entitled. The Court should grant this petition to resolve the conflict.

CONCLUSION

The court of appeals's decision implicates an important and unsettled question of federal law that has not been, but should be, decided by this Court. The lower state and federal courts are split on the proper resolution of the question presented. This Court should grant the State's petition to resolve this long-standing conflict, impacting the support of the nation's children.

Respectfully Submitted,

JOHN CORNYN
Attorney General of Texas
ANDY TAYLOR
First Assistant
Attorney General
GREGORY S. COLEMAN
Solicitor General
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APPENDIX A

COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

RAUL REYES	§	
		No. 08-96-00418-CV
Appellant,	§	
		Appeal from the 143rd
v.	§	Judicial District Court
ESTELLA M. GONZALES AND THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS,	§	of Reeves, County, Texas
	§	(TC#13,651)
	§	
Appellees.		

OPINION ON MOTION FOR REHEARING

We issued our original opinion in this case on April 16, 1998. That opinion affirmed the judgment of the trial court. Appellant, Raul Reyes, subsequently filed a Motion for Rehearing. We grant Raul Reyes' Motion for Rehearing, withdraw our opinion of April 16, 1998, and substitute the following in its stead.

This is an appeal from an Order Enforcing Child Support Obligation. Raul Reyes contends that the order violates certain

anti-attachment provisions of the Social Security Act and the Supremacy Clause of the United States Constitution by including his Supplemental Security Income (SSI) benefits in the calculation of net resources for the purpose of determining child support. We reverse and remand.

I. SUMMARY OF THE EVIDENCE

A. Procedural History

Appellant Raul Reyes initiated the underlying action by filing a Motion to Modify in Suit Affecting the Parent-Child Relationship in April, 1996. Raul Reyes sought modification and reduction of the child support order directing him to pay child support for the benefit of the minor child Estella M. Reyes. The Attorney General filed a Motion to Enforce the Order. The court found that there was a material and substantial change in Raul Reyes' circumstances and reduced the amount of his child support obligation to $82.25 a month. The court also ordered payments of $25 per month for the amount in arrears. The court overruled Raul

Reyes' motion to exclude his Supplemental Security Income Disability Benefits from his net resources for the purpose of establishing child support. Raul Reyes filed a Motion for New Trial, which was overruled by the court. This appeal followed.

B. Factual History

Appellant Raul Reyes applied for SSI in 1993 after suffering a stroke. He receives $470 per month in SSI benefit and food stamps having a cash value of $131 per month. Out of his monthly SSI check, he spends $204 for his van, $116 to pay loans used to by furniture, clothes, and a refrigerator, and to send his stepsons and his son of his second marriage to school.

Raul Reyes has a daughter, Estella, who is the subject of this suit. Raul Reyes was ordered to pay child support for her in 1991. He failed to pay this support in 1992 and 1993, and in 1994, the court ordered him to pay $135 per month. After the 1994 order, Raul Reyes paid the proceeds of this account with the Teacher's

Retirement System into the child support registry for Estella. He did not pay support in 1996.

II. DISCUSSION

Appellant Raul Reyes brings four points of error. He contends that the inclusion of his Supplemental Security Income within the calculation of net resources for the purpose of establishing child support violates the Supremacy Clause of the United States Constitution and the Anti-Alienation Provisions of the Social Security Act, and that the trial court erred by including this source of income. We begin with a discussion of the standard of review.

1. Standard of Review

A court's child support order will not be disturbed on appeal unless the complaining party shows that the order constituted a clear abuse of the court's discretion. *See Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex. 1990). The test is whether the court acted arbitrarily or unreasonably, without reference to any guiding rules

and principles. *See Simon v. York Crane and Rigging Co.*, 739 S.W.2d 793 (Tex. 1987). If the court determines a material and substantial change has occurred, the extent of the alteration of the amount of child support also lies within the court's discretion. *See In the Matter of the Marriage of Hamer*, 906 S.W.2d 263, 265 (Tex. App.–Amarillo 1995, no writ); *Thomas v. Thomas*, 895 S.W.2d 895, 897 (Tex. App.–Waco 1995, writ denied). When there is some evidence of a substantive and probative character to support the decision, no abuse of discretion occurs. *See Holley v. Holley*, 864 S.W.2d 703, 706 (Tex. App.–Houston [1st Dist.] 1993, writ denied). In determining whether the trial court abused its discretion in setting a child support order, we will affirm so long as there is some evidence of a substantive and probative character to support the trial court's decision. *See Thomas*, 895 S.W.2d at 896; *see also, Wilemon v. Wilemon*, 930 S.W.2d 290, 294 (Tex. App.–Waco 1996).

A. Anti-Attachment Provision

In Issue Two, Appellant contends that the Anti-Attachment Provision of the Social Security Act prohibits the trial judge from considering his SSI Disability Benefits in calculation of net resources for child support purposes. The Anti-Attachment Provision for SSI reads:

> The provisions of section 407 of this title and subsection (a), (d) and (e) of section 405 of this title shall apply with respect to this part to the same extent as they apply in the case of subchapter II of this chapter.

42 U.S.C. § 1383(d)(1) (Supp. 1999).

"Section 407" refers to 42 U.S.C. § 407 (1991), which is the anti-attachment provision for social security benefits and is found in subchapter II of the Social Security Act. Section 407 provides:

> (a) The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

> (b) No other provision of law, enacted before, on, or after April 20, 1983, may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section.

42 U.S.C. § 407 (1991)

An exception to the anti-attachment provision for social security insurance benefits does exist and it provides:

> (a) Consent to support enforcement. Notwithstanding any other provision of law (including section 407 of this title and section 5301 of Title 38), effective January 1, 1975, moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States or the District of Columbia (including any agency, subdivision, or instrumentality thereof) to any individual, including members of the Armed Forces of the United States, shall be subject, in like manner and to the same extent as if the United States or the District of Columbia were a private person, to withholding in accordance with State law enacted pursuant to subsections (a)(1) and (b) of section 666 of this title and regulations of the Secretary under such subsections, and to any other legal process brought, by a State agency administering a program under a State plan approved under this part or by an individual obligee, to enforce the legal

> obligation of the individual to provide child support or alimony.[1]

42 U.S.C. § 659(a)(Supp. 1999).

Appellant argues that Section 659 is applicable only to monies or benefits based on remuneration for employment, including compensation payable for personal services and periodic benefits under the insurance system. Because there is no specific reference to SSI Disability Benefits in the definitional section, Appellant claims that these benefits should not be included as an exception. We agree.

We find *Tennessee Department of Human Services ex rel. Young v. Young*, 802 S.W.2d 594 (Tenn. 1990) to be instructive. Johnny and Lisa Young were divorced and Ms. Young was awarded custody of their daughter. *Id.* at 595. Mr. Young was ordered to pay $100 per month for child support. *Id.* Mr. Young fell behind

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[1] This is the text of the recently amended Section 659. This case was tried under the former version of Section 659, but the changes made by the amendment do not make a material difference.

in his payments and the Department of Human Services filed contempt proceedings against him. *Id.* He was found to be in arrears and was ordered to resume the $100 monthly payments. *Id.* The judgment also called for garnishment of his "SSI check" through the Social Security Administration. *Id.* At the hearing before the domestic relations judge, Mr. Young established that his income was limited to the Supplemental Security Income he received in the amount of $386 per month. *Id.* The judge, however, affirmed the garnishment order. *Id.* Mr. Young's appeal to the court of appeals was also unsuccessful. *Id.* Thereafter he appealed to the Tennessee Supreme Court, who concluded that his claim of exemption was meritorious. *Id.*

After analyzing the same statutes at issue in the case at bar, the Tennessee Supreme Court reasoned that Section 407(b) specifically prohibits modification of the anti-garnishment provision in Section 407(a) other than by express reference, and that Section 659, enacted after the provision in Section 1383(d)(1),

makes no express reference to the exemption of SSI benefits from the grant of sovereign immunity. *Id.* at 599. The court further explained that Section 659 applies only to monies paid by the federal government, "the entitlement to which is based uon remuneration for employment.'" *Id.* The court reasoned that because SSI benefits are paid to those who are by definition unemployed and unemployable, the receipt of SSI benefits cannot be said to be based upon "'remuneration for employment.'" *Id.* The court concluded that by definition, SSI payments are not included in the funds to which "'express reference'" is made and that SSI benefits fall within the pre-existing anti-garnishment provision of Section 407(a). *Id.* The court declined to hold "'that the recipient's family falls within a 'protected category' so as to create an inescapable obligation upon the recipient.'" *Id.* Thus, the court held that Mr. Young's SSI benefits were not subject to the garnishment order entered in the trial court. *Id.*

While Appellant was not subjected to a garnishment order in the case at bar, he argues that by including his SSI benefits in the calculation for child support, the court erred in that if he fails to pay, his SSI benefits cannot be garnished to pay the obligation. We agree. Because Section 659 is applicable only to monies or benefits based on remuneration for employment and because there is no specific reference to SSI Disability Benefits in the definitional section, these benefits should not have been included as an exception. Accordingly, we sustain Issue No. Two.

Having sustained Issue No. Two and finding it dispositive, we need not address Appellant's remaining issues. The judgment of the trial court is reversed and the cause is remanded for proceedings not inconsistent with this opinion.

January 13, 2000

/s/ Richard Barajas
Richard Barajas, Chief Justice

Before Panel No. 2
Barajas, C.J., McClure, and Chew, JJ.

(Publish)

APPENDIX B

NCP Name: RAUL REYES
CP Name: ESTELLA M GONZALES
OAG Number: **0174288461**

CAUSE NUMBER 13651

IN THE INTEREST OF	§	IN THE 143RD JUDICIAL
ESTELLA M REYES	§	DISTRICT OF
A CHILD	§	REEVES COUNTY, TEXAS

ORDER ENFORCING CHILD SUPPORT OBLIGATION

On the 12th day of July, 1996, the Court held a hearing in this cause.

The Attorney General appeared by Assistant Attorney General.

ESTELLA M GONZALES, mother of the child, social security number 465-92-6377, driver license number _____,

[X] appeared in person (and by attorney Lilly Plummer);

[X] agreed to the entry of these orders as evidenced by her signature;

[ ] although duly notified, did not appear.

RAUL REYES, father of the child, social security number 464-80-6282, driver license number 05953803,

[X] appeared in person (and by attorney Chris McCormack);

[X] agreed to the entry of these orders as evidenced by his

signature;
[ ] although duly notified, did not appear.

The Court finds that it has jurisdiction of the parties and the subject matter of this suit, and that the following orders are in the best interest of the child.

A record of the proceedings was made.

CHILDREN

The Court FINDS that the following child is the subject of this suit:

Name:	Sex	Birthdate	SSN	DL#	Birthplace
ESTELLA M. REYES	F	1/29/81	464-63-4635		Odessa, TX

MODIFICATION OF SUPPORT ORDER

The Court finds that, since rendition of the order entitled order establishing the parent-child relationship, signed June 14, 1991, there has been a material and substantial change in the circumstances of the child and/or parties that warrants the following modification of the existing child support order.

REGULAR CHILD SUPPORT

The Court ORDERS Obligor Raul Reyes to pay obligee Estella M. Gonzales regular child support of $82.25 each month beginning the 15th day of July, 1996, payable on or before that date and on or before the same day(s) of each month thereafter while any child is less than 18 years of age or while any child is fully enrolled in an accredited school in a program leading toward a high school diploma, whichever occurs last, or until every child is otherwise emancipated.

The Court ORDERS Obligor to pay all child support through the registry prescribed in this decree, and any direct payments by Obligor or any expenditures incurred during Obligor's periods of possession shall be deemed in addition to and not in lieu of the child support ordered herein.

The Court ORDERS that the child support provisions of this order shall be an obligation of Obligor's estate, and shall not terminate on his death. Any payments received for the benefit of the child from the Social Security Administration, Veteran's Administration or other survivor's benefits shall be credited against this obligation.

Other:_____

_____

PRIOR ORDER

The Court FINDS that on 12/9/94 the Court ordered RAUL REYES to pay regular child support of $135.00 monthly, beginning 7/15/91 and monthly thereafter.

JUDGMENT ON ARREARS

The Court FINDS and confirms that RAUL REYES is in arrears in the amount of $1,620.00 as of July 12, 1996. This includes all unpaid child support and any balance owed on previously confirmed arrearages or retroactive support judgments as of the specified date, but does not include application of any child support paid on that date. The judgment for this amount is a cumulative judgment.

The Court GRANTS JUDGMENT against RAUL REYES and in favor of the Attorney General in the amount of $1,620.00, with

interest at the rate of 12% per annum, for collection and distribution according to law.

The Court ORDERS RAUL REY[illegible] the Obligor, to pay said child support judgment by paying $------.-- on or before the ---- day of ------, 19---- and by paying $ 25. 00 each month beginning the 15th day of July, 1996 on or before that date and on or before the same date of each month thereafter until the arrearage is paid in full, or on the termination of support for any child, subject of this suit.

If RAUL REYES has not paid the judgment in full by the date his regular child support obligation ends, the Court ORDERS him to pay the remainder of said judgment by paying $ 107.25 each month on or before the 15th of each month until he has paid the judgment in full. The withholding order authorized herein shall include such payments, but nothing herein shall prohibit the use of other collection methods authorized by law.

PAYMENT OF CHILD SUPPORT, FEES AND COSTS

The Court ORDERS RAUL REYES to pay all child support through the REEVES County District Clerk's Office:

JUANA JACQUEZ
REEVES COUNTY COURTHOUSE
P. O. BOX 848
PECOS TX 79772

who shall forward such payments to:

The Office of the Attorney General
P.O. Box 13499
Austin, TX 78711-3499

for distribution according to law.

The Court ORDERS RAUL REYES to pay court costs as billed to the District Clerk of REEVES County, Texas, on or before the 1st day of February 1997.

INCOME WITHHOLDING

The Court ORDERS, pursuant to Texas Family Code Chapter 158, any employer of RAUL REYES, current or subsequent, to withhold income from the disposable earning of RAUL REYES for the child's support as set out in the EMPLOYER'S ORDER TO WITHHOLD EARNING FOR CHILD SUPPORT entered herein. Any income withheld from RAUL REYES's disposable earnings for child support and paid according to this order shall be credited against his child support obligation, but shall not discharge any of his child support obligation that exceeds the amount so credited.

The Court ORDERS the Clerk of the Court, upon request, to cause a certified copy of the EMPLOYER'S ORDER TO WITHHOLD EARNING FOR CHILD SUPPORT, with a copy of Texas Family Code Chapter 158 attached, to b delivered to RAUL REYES's employer.

The Court ORDERS RAUL REYES to provide any subsequent employer with a copy of the EMPLOYER'S ORDER TO WITHHOLD EARNING FOR CHILD SUPPORT entered herein.

STATUTORY WARNINGS

FAILURE TO OBEY A COURT ORDER FOR CHILD SUPPORT OR FOR POSSESSION OF OR ACCESS TO A CHILD MAY RESULT IN FURTHER LITIGATION TO ENFORCE THE ORDER, INCLUDING CONTEMPT OF

COURT. A FINDING OF CONTEMPT MAY BE PUNISHED BY CONFINEMENT IN JAIL FOR UP TO SIX MONTHS, A FINE OF UP TO $500 FOR EACH VIOLATION, AND A MONEY JUDGMENT FOR PAYMENT OF ATTORNEY'S FEES AND COURT COSTS.

FAILURE OF A PARTY TO MAKE A CHILD SUPPORT PAYMENT TO THE PLACE AND IN THE MANNER REQUIRED BY A COURT ORDER MAY RESULT IN THE PARTY NOT RECEIVING CREDIT FOR MAKING THE PAYMENT.

FAILURE OF A PARTY TO PAY CHILD SUPPORT DOES NOT JUSTIFY DENYING THAT PARTY COURT-ORDERED POSSESSION OF OR ACCESS TO A CHILD. REFUSAL BY A PARTY TO ALLOW POSSESSION OF OR ACCESS TO A CHILD DOES NOT JUSTIFY FAILURE TO PAY COURT-ORDERED CHILD SUPPORT TO THAT PARTY.

EACH PERSON WHO IS A PARTY TO THIS ORDER IS ORDERED TO NOTIFY EACH OTHER PARTY WITHIN 10 DAY S AFTER THE DATE OF ANY CHANGE IN THE PARTY'S CURRENT RESIDENCE ADDRESS, MAILING ADDRESS, HOME TELEPHONE NUMBER, NAME OF EMPLOYER, ADDRESS OF EMPLOYMENT, AND WORK TELEPHONE NUMBER. THE PARTY IS ORDERED TO GIVE NOTICE OF AN INTENDED CHANGE IN ANY OF THE REQUIRED INFORMATION TO EACH OTHER PARTY ON OR BEFORE THE 60TH DAY BEFORE THE INTENDED CHANGE. IF THE PARTY DOES NOT KNOW OR COULD NOT HAVE KNOWN OF THE CHANGE IN SUFFICIENT TIME TO PROVIDE 60-DAY NOTICE, THE PARTY IS ORDERED TO GIVE NOTICE OF THE CHANGE

ON OR BEFORE THE 5TH DAY AFTER THE DATE THAT THE PARTY KNOWS OF THE CHANGE.

THE DUTY TO FURNISH THIS INFORMATION TO EACH OTHER PARTY CONTINUES AS LONG AS ANY PERSON, BY VIRTUE OF THIS ORDER, IS UNDER AN OBLIGATION TO PAY CHILD SUPPORT OR ENTITLED TO POSSESSION OF OR ACCESS TO A CHILD.

FAILURE BY A PARTY TO OBEY THE ORDER OF THIS COURT TO PROVIDE EACH OTHER PARTY WITH CHANGE IN THE REQUIRED INFORMATION MAY RESULT IN FURTHER LITIGATION TO ENFORCE THE ORDER, INCLUDING CONTEMPT OF COURT. A FINDING OF CONTEMPT MAY BE PUNISHED BY CONFINEMENT IN JAIL FOR UP TO SIX MONTHS, A FINE OF UP TO $500 FOR EACH VIOLATION, AND A MONEY JUDGMENT FOR PAYMENT OF ATTORNEY'S FEES AND COURT COSTS.

NOTICE TO THE ATTORNEY GENERAL

All notices required in the above Statutory Warnings shall additionally by given - - by delivery of the notice in person or by mailing the notice - - to:

The Office of the Attorney General
312 N. Texas
Odessa TX 79761

or by facsimile transmission to (915) 333-3522.

REVIEW

Pursuant to 45 CFR 303.8, every parent subject to a child support order has the right to request a review of the ordered child support amounts by contacting the Child Support Division of the Office of the Attorney General.

ORDER ADOPTING MASTER'S REPORT

The Court approves and adopts the above and foregoing orders as the order of the Court.

Signed this 12th day of July, 1996.

/s/ Bob Parks
JUDGE PRESIDING

APPROVED:

/s/ Tamra R. Torres
Tamra R. Torres
Assistant Attorney General
Child Support Division
Texas Bar No. 00792144
312 N. Texas
Odessa TX 79761
Phone (915) 333-1464
Fax (915) 333-3522 - APPROVED AS TO FORM ONLY

/s/ Chris McCormick - APPROVED AS TO
Chris McCormick, Atty for Raul Reyes FORM ONLY ON THE
MODIFICATION
ORDER

/s/ Lilly Plummer
Lilly Plummer, atty for Estella M. Gonzales

/s/ RAUL REYES - APPROVED AS TO FORM ONLY ON
Raul Reyes THE MODIFICATION ORDER

/s/ Estella M. Gonzales
Estella M. Gonzales

APPENDIX C

NO. 13,651

IN THE INTEREST OF	{	IN THE 143TH JUDICIAL
	{	
	{	DISTRICT COURT OF
	{	
	{	
ESTELLA M. REYES	{	REEVES COUNTY,
A MINOR CHILD	{	TEXAS

ORDER DENYING MOTION FOR NEW TRIAL

On this the 20th day of September, 1996, came on to be considered and heard the Motion for New Trial filed herein by RAUL REYES. Movant RAUL REYES appeared by and through his attorney of record CHRIS MCCORMACK; the Office of the Attorney General of the State of Texas appeared by and through its' attorney of record TAMRA TORRES; and Respondent ESTELLA M. GONZALES appeared by and through her attorney of record LILLY PLUMMER. All parties announced ready. After having heard the arguments and stipulations of Counsel the Court finds that the $470.00 in net resources deemed by the Court to be available to

RAUL REYES are Supplemental Security Income Benefits paid to Mr. Reyes under the provisions of the Social Security Act because he is disabled. All parties announced in open Court through their attorneys of record that they stipulated and agree to that Fact Finding. However, after further hearing the arguments and authority cited by Counsel the Court concludes that the Supremacy Clause of the United States Constitution, and the Anti-assignment Provisions of the Social Security Act do not pre-empt the application of the Texas Statutory Child Support Guidelines to RAUL REYES' SSI Benefits. The Court therefore concludes that the Motion for New Trial filed herein by RAUL REYES should in all things be DENIED.

IT IS ACCORDINGLY ORDERED, ADJU GED AND DECREED that the Motion for New Trial is OVERRULED and DENIED.

/s/ Paul McCollum
JUDGE PRESIDING
Judge Paul McCollum

APPENDIX D

Ncp Name: Reyes, Raul
Cp Name: Gonzales, Estella M.
Ag Account No. 0174288461

NO. 13,651

IN THE INTEREST	§	IN THE 143RD JUDICIAL
	§	
	§	DISTRICT COURT OF
	§	
ESTELLA M. REYES,	§	REEVES COUNTY,
A MINOR CHILD	§	TEXAS

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-captioned cause came on for trial before the Court without a jury on July 12, 1996. All parties and their attorneys were present. After considering the pleadings, the evidence, the argument and briefs from counsel, the Court, in response to a request from counsel for movant, Chris McCormack, makes its findings of fact and conclusions of law as follows:

FINDINGS OF FACT

1. There has been a substantial and material change in circumstances since rendition of the June 14, 1991 support order.

2. The amount of net resources available to Paul Reyes, hereinafter the obligor, per month is $470.00.

3. The number of children before the court is one.

4. The number of children not before the court for whom the obligor is obligated to pay support is one.

5. The % applied to the obligor's monthly net resources is 17.5.

6. The amount of support if the percentage guidelines are applied to the first $6000.00 of obligor's monthly net resources is $82.25.

CONCLUSIONS OF LAW

1. The change in circumstance warrants a modification of obligor's child support obligation.

2. Because the amount of support contained in the 1991 order does not substantially conform with the statutory support guidelines, a modification is warranted.

3. Because the obligor is legally obligated to support one child in addition to the child before this court, the multiple family guidelines apply.

4. Application of Texas statutory child support guidelines is reasonable and in the best interest of the child.

Signed this 24th day of July, 1996.

/s/ Bob Parks
Judge Presiding